

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES W. BALLINGER.

Case No. 1:07-cv-256

Plaintiff,

Spiegel, J.
Bowman, M.J.

v.

CITY OF LEBANON, et al.,

Defendants.

REPORT AND RECOMMENDATION

Although Plaintiff paid the full filing fee when he filed his civil complaint in this case, he has now moved to proceed *in forma pauperis* on appeal. Pursuant to local practice, the motion has been referred to the undersigned for initial consideration and a Report and Recommendation. 28 U.S.C. §636(b)(1)(B); *Woods v. Dahlberg*, 894 F.2d 187 (1990).

Defendants oppose Plaintiff's motion on grounds that Plaintiff has failed to state the issues that he intends to present on appeal as required by Rule 24(a)(1) of the Federal Rules of Appellate Procedure. In addition, Defendants correctly point out that pursuant to 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* "if the trial court certifies in writing that the appeal is not taken in good faith." In order to meet the "good faith" standard, Plaintiff must demonstrate that his appeal presents a substantial question that is not frivolous. *Ishaq v. Compton*, 900 F. Supp. 935, 945 (W.D. Tenn. 1995).

Plaintiff has not complied with Rule 24(a)(1). In addition, the undersigned has determined that Plaintiff's appeal would not be taken in good faith. As reflected in both

the R&R filed on September 16, 2010 (Doc. 55), and in the Opinion and Order of the presiding district judge adopting that R&R in its entirety (Doc. 64), Plaintiff's claims are clearly time-barred.

Accordingly, **IT IS RECOMMENDED THAT** the district court certify that Plaintiff's appeal would not be taken in "good faith," and, therefore, that the court **DENY** Plaintiff's motion for leave to appeal *in forma pauperis* (Doc. 68) upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

s/ Stephanie K. Bowman

Stephanie K. Bowman
United States Magistrate Judge

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Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).